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30 **UNITED STATES DISTRICT COURT**

31 **NORTHERN DISTRICT OF CALIFORNIA**

32 DEMETRIC DI-AZ, OWEN DIAZ, and  
33 LAMAR PATTERSON,

34 Plaintiffs,

35 v.

36 TESLA, INC. dba TESLA MOTORS, INC.;  
37 CITISTAFF SOLUTIONS, INC.; WEST  
38 VALLEY STAFFING GROUP;  
39 CHARTWELL STAFFING SERVICES, INC.;  
40 and DOES 1-50, inclusive,

41 Defendants.

42 Case No. 3:17-cv-06748-WHO

43 **PLAINTIFF'S RESPONSE TO TESLA'S**  
44 **EXCEPTIONS TO COURT'S**  
45 **PRELIMINARY JURY INSTRUCTIONS**

1  
2       The Court issued its Preliminary Jury Instructions on March 16, eight days ago. Near  
3 midnight last night, without meeting and conferring and on the eve of trial, Tesla filed its  
4 “Exceptions to the Court’s Preliminary Jury Instructions.” Dkt. 425. This filing is tardy,  
5 meritless, redundant, and vexatious.

6       There is no basis for Tesla’s new filing. Tesla’s filing raises precisely the same  
7 arguments it raised previously in its briefs, *see, e.g.*, Dkt. 389, and at the Pretrial Conference.  
8 The Court already thoroughly considered and rejected these arguments, including in its “Order  
9 on Motions In Limine, Michael Wheeler Testimony, and Punitive Damages,” Dkt. 417.  
10 Accordingly, Plaintiff will not waste the Court’s time by again rebutting Tesla’s arguments on  
11 their merits, since the Court has already done so, and since the Court’s analysis was both  
12 thorough and correct.

13       Given that Tesla’s filing provides no basis for this Court to reconsider its earlier rulings,  
14 it appears that Tesla’s motion is intended to further one or more of three alternative strategies—  
15 none of which is proper.

16       *First*, the Court expressly found that it had *already* ruled that Tesla was judicially  
17 estopped from seeking a retrial on liability, including liability for punitive damages, and that  
18 Tesla continued to be judicially estopped from making that argument. Dkt. 417 at 9-10.  
19 Tellingly, Tesla’s new filing completely ignores this aspect of the Court’s prior rulings, an  
20 adequate, independent ground for the Court’s rejection of Tesla’s arguments. Tesla now asserts  
21 that it is seeking to “make an appropriate record, and to preserve issues for appeal if necessary.”  
22 Tesla Obj. at 1. But the time has long passed for Tesla to assert new objections or to propose new  
23 instructions (other than in response to specific, unanticipated events at trial), and Tesla cannot  
24 avoid the Court’s prior judicial-estoppel rulings by renewing the same objections and arguments  
25 that the Court has previously rejected and ruled that Tesla was already estopped from pursuing.

26       *Second*, in several instances, Tesla’s purported effort to “make an appropriate record, and  
27 to preserve issues for appeal if necessary” impermissibly rests upon a completely reversal of  
28 Tesla’s prior position on the same issue. For example, Tesla now “objects” that the Court has not  
included an instruction for nominal punitive damages, which Tesla claims (falsely) is “well

1 established.” Tesla Obj. at 7. But when Tesla submitted its initial draft Proposed Jury  
2 Instructions to the Court, *Tesla’s* proposed instructions did not include *any* request for a nominal  
3 punitive damages instruction. *See* Dkt. 374-2 at 3. While Tesla later reversed course and argued  
4 (unsuccessfully) that a nominal punitive damages instruction was proper, Tesla’s filing here  
5 seems intended in part to cover up its prior contradictory position.

6 *Third*, given that Tesla filed numerous meritless “objections” on the eve of trial, it  
7 appears that Tesla’s three midnight motions are simply abusive litigation tactics, designed to  
8 disrupt Plaintiff’s final trial preparation activities in the little time remaining before trial. The  
9 Court, like Plaintiffs, has better things to do with its time than spend the last day before trial  
10 revisiting issues that are now well-settled, after having been extensively briefed and  
11 comprehensively argued in previous weeks.

12 For these reasons and those already stated by the Court, the objections should be  
13 overruled.

14  
15 Dated: March 24, 2023

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